

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**ROBERT SILER,**

**Plaintiff,**

**CIVIL ACTION NO. 08-CV-15077**

**vs.**

**DISTRICT JUDGE PATRICK J. DUGGAN**

**W. BALDWIN, et al.,**

**MAGISTRATE JUDGE MONA K. MAJZOUN**

**Defendants.**

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**ORDER GRANTING PLAINTIFF'S MOTION FOR CONSIDERATION OF  
MOTION FOR LEAVE TO AMEND (DOCKET NO. 82) AND  
DENYING AS MOOT PLAINTIFF'S MOTION FOR LEAVE TO AMEND  
PLAINTIFF'S RULE 56(f) AFFIDAVIT (DOCKET NO. 83)**

These matters come before the Court on two motions. The first motion is Plaintiff's Motion for Consideration of Motion for Leave to Amend, filed on February 5, 2010. (Docket no. 82). The second motion is Plaintiff's Motion for Leave to Amend Plaintiff's Rule 56(f) Affidavit, filed on February 5, 2010. (Docket no. 83). Defendant Baldwin did not file responses to the motions and the time for responding has expired. All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). These matters are now ready for ruling.

Plaintiff filed the instant Motion for Consideration asking the Court to consider his Motion for Leave to Amend Plaintiff's Rule 56(f) Affidavit. The Court will grant Plaintiff's Motion for Consideration. In Plaintiff's Motion for Leave to Amend, Plaintiff requests permission to amend his Rule 56(f) affidavit, which was submitted on December 14, 2009 along with a brief in opposition to Defendant's motion for summary judgment. (Docket no. 74). In the instant motion, Plaintiff asks

that he be permitted to supplement his Rule 56(f) affidavit to specifically identify what material facts he believes he will uncover if he is allowed more time to conduct discovery. (Docket no. 83).

On March 16, 2010 the district court considered this Court's Report and Recommendation on Defendant Baldwin's motion for summary judgment and determined that a triable issue remains as to whether Defendant Baldwin acted with deliberate indifference to Plaintiff's serious medical need. (Docket no. 90). The Court's ruling on Plaintiff's Rule 56(f) affidavit pertains to Plaintiff's response to Defendant Baldwin's motion for summary judgment only and has no bearing on Plaintiff's ability to conduct discovery for purposes of trial. Because the Court has already ruled on the motion for summary judgment and found in favor of the Plaintiff, Plaintiff's Motion for Leave to Amend will be denied as moot.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Consideration of Motion for Leave to Amend (docket no. 82) is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to Amend Plaintiff's Rule 56(f) Affidavit (docket no. 83) is **DENIED** as **MOOT**. (Docket no. 83).

#### **NOTICE TO THE PARTIES**

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: April 27, 2010

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

#### **PROOF OF SERVICE**

I hereby certify that a copy of this Order was served upon Robert Siler and Counsel of Record on this date.

Dated: April 27, 2010

s/ Lisa C. Bartlett  
Case Manager